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No. _____

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

PINEHURST AREA REALTY, INC.,
Petitioners,

v.

THE VILLAGE OF PINEHURST.

Petition for a Writ of Certiorari to the Supreme Court of North Carolina

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I.

Whether North Carolina's nine month statute of limitations bars claims arising under 42 U.S.C. § 1983. The North Carolina Court of Appeals, in its opinion in this matter, held that federal constitutional claims in zoning actions are barred by the nine month statute of limitations established by North Carolina law for zoning actions. (App. pp. 12, 13) The Supreme Court has held, in *Owens v. Okure*, 488 U.S. 235 (1989), "a State's personal injury statute of limitations should be applied to all 42 U.S.C. § 1983 claims." *Id.* at 241. Did the North Carolina Court, by dismissing PAR's claim without reaching the merits, deprive PAR of constitutionally protected rights?

II.

Whether the petitioner, by being barred from relief

by a nine month statute of limitations, was deprived of a constitutionally protected property right to its cause of action where petitioner received no notice of the offending ordinance and whether, under the circumstances of this case, the North Carolina statute of limitations applicable to zoning matters is unconstitutional.

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---

Pinehurst Area Realty, Inc. hereby petitions the Court for a writ of certiorari to the Supreme Court of North Carolina.

OPINIONS BELOW

The opinion of the North Carolina Court of Appeals on petitioner's appeal from dismissal of

petitioner's claims by the trial court and denial of petitioner's motion summary judgment (App. p. 5) is reported at 100 N.C. App. 77, 394 S.E.2d 251 (1990). The *per curium* decision of the North Carolina Supreme Court denying petitioner's petition for appeal by right and for discretionary review (App. p. 1) is not reported at this time. The trial court's orders dismissing petitioner's claims and denying petitioner's motion for summary judgment (App. p. 18) and denying petitioner's motion for reconsideration (App. p. 15) are unpublished.

JURISDICTION

The Supreme Court of North Carolina issued its order dismissing petitioner's appeal and denying its petition for discretionary review on the 10th day of January 1991. (App. p. 1) This petition is, accordingly,

filed within the time allowed by law. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. V provides, in pertinent part:

> No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. XIV provides, in pertinent part:

> [N]or shall any State deprive any person of life, liberty or property, without due process of law. . . .

STATEMENT OF THE CASE

This litigation challenges zoning ordinances purportedly enacted on July 15, 1985 by the Village of

Pinehurst, a municipality and legal subdivision of the State of North Carolina, which substantially effect real property owned and developed by the petitioner, Pinehurst Area Realty, Inc. (hereinafter "PAR"). PAR challenged the zoning ordinances, in its complaint commencing this action filed on March 14, 1988, on the grounds that the Village of Pinehurst had failed to publish notice of any proposed zoning ordinances affecting PAR's property, and that, in fact, the Village had never actually enacted any such ordinance. PAR, in its complaint, raised the federal question at issue by stating that:

> [The Village of Pinehurst's] actions in purportedly classifying PAR's properties with restrictive zoning were taken without regard to the procedures set forth by the North Carolina General Statutes, and as such, violated Plaintiff's right to due process under the United States Constitution and the North Carolina Constitution. [Complaint, ¶ 38, Count I].

The facts giving rise to this action are generally

matters of public record. Pinehurst PAR, a North Carolina corporation engaged in the business of real property development and sales, is the developer of an approximately 92 acre residential development known as Midland Country Club (hereinafter "the country club property"). In addition, PAR owns an approximately 7 acre tract (hereinafter "the office property") adjoining the country club property upon which PAR maintains its place of business and has intended to develop further.

Prior to July 1985, both the country club property and the office property were within the planning and zoning jurisdiction of Moore County. From 1981 to 1984, PAR engaged in a protracted and highly publicized battle to have its country club property zoned RD under Moore County's zoning ordinances; a classification which would allow PAR to develop single and multi-family residences. After successfully obtaining the RD classification, PAR did

in fact develop the country club property into a residential community conducive to the needs of senior citizens. As a part of the development, a golf course was constructed; however, the golf course land was subject to the RD zoning as well and if, at some future date, PAR perceived that the golf course was no longer the desire of the country club's residents, then PAR could develop that land with residential units as well. The office property was zoned by Moore County as B-1, which permitted a wide variety of commercial uses.

On June 3, 1985, the North Carolina General Assembly ratified 1985 Session Law 308 (App. p. 23) and allowed the Village of Pinehurst, under certain conditions, the right to exercise its zoning and planning powers up to two miles beyond their corporate limits. The Act directed that:

> When . . . the Village of Pinehurst . . . annexes any area outside its corporate limits

thus extending the area over which it would be allowed . . . to exercise the powers . . . [of extraterritorial zoning], upon presenting proper evidence to the County Board of Commissioners that such annexation has been accomplished, the County Board of Commissioners shall adopt a resolution authorizing said municipality to exercise these powers within the extended area thus described. *(Id.* at App. pp. 23, 24.)

PAR was actively involved with the process of determining the boundaries of the Village of Pinehurst's extraterritorial jurisdiction; representatives of PAR attended many of the meetings of the "Blue Ribbon Committee", a committee established to determined the most appropriate jurisdictional boundaries for Moore County and the various municipalities involved. Ultimately, the recommendation was made that PAR's properties, both the country club and the office property, were to be in the Village of Pinehurst's zoning jurisdiction. PAR had no objection, although it stated on several occasions that it certainly would object if its hard-fought zoning classifications were altered by the redistricting.

Thereafter, on June 26, 1985 and July 3, 1985, the Village of Pinehurst caused to be published in *The Pilot*, a local newspaper, notices of a public hearing to be held on July 8, 1985 "for the purpose of considering a proposed area for addition to the extraterritorial zoning jurisdiction of the Village of Pinehurst." PAR did not attend this public hearing; it was already aware of the area to be included in the extraterritorial jurisdiction of the Village, and knew that its property was to be included.

On July 15, 1985, the Village Council of the Village of Pinehurst adopted language which it claimed to be an ordinance entitled "An Ordinance Providing for the Extraterritorial Limits of the Village of Pinehurst for Purposes of Planning and Zoning, Building Inspection and Subdivision Regulations." The purported ordinance stated:

> SECTION 1: That the area of extraterritorial limits of the Village of Pinehurst shall be amended and extended as shown and delineated on the map prepared by C.H. Blue and Associates, which map is attached hereto, and correspondingly described in Exhibit "A"attached hereto and dated July 15, 1985.

However, no "Exhibit A" dated July 15, 1985 has ever been found, produced or proven.

Only later, on July 22, 1985, the Board of Commissioners of Moore County, as reflected by their minutes, relinquished extraterritorial zoning jurisdiction to the Village of Pinehurst effective July 22, 1985. (App. p. 25).

Approximately one year later, representatives of PAR happened to see a zoning map which indicated that a substantial portion of the country club property was zoned Public-Conservation and Recreation ("PCR") and the office property was zoned Office-Professional (OP). The PCR zoning classification permits no residential units

whatsoever; it permits only golf courses, riding trails, nature preserves, sewer lift stations, and other non-developed uses. The OP zoning classification permits only limited commercial development such as small professional offices. This was the first time that PAR had any knowledge whatsoever that its properties had been rezoned, or indeed, that rezoning had ever been contemplated for those properties.

Thereafter, PAR undertook to remedy the matter through administrative means. At the recommendation of the Village of Pinehurst, PAR divided its claims into two separate petitions; first, PAR petitioned to have the OP classification rezoned to Neighborhood Commercial "NC". Ultimately, PAR's petition for the NC rezoning was denied. Instead, the Village of Pinehurst created new zoning classifications, NC-1 and NC-2, and contrary to PAR's petition and desire, rezoned the office property to

NC-2. At that point, PAR realized that its administrative efforts would be futile and filed this action in the Superior Court of North Carolina.

Upon the filing of this action, PAR, in its requests for production of documents, requested the map referred to in the purported ordinance adopted July 15, 1985. No map was produced in response to the Request.[1] No map bearing the date July 15, 1985 has been located.

The Village of Pinehurst moved to dismiss PAR's claims; PAR moved for summary judgment against the Village. At the hearing on those motions, PAR again raised the federal constitutional question, arguing that the failure to provide notice was an unconstitutional deprivation of due process and that the application of a nine month statute of limitations to PAR's claims would

[1]After the hearing giving rise to this appeal, a map was provided *ex parte* by the Village to the presiding judge with representations that the map was the one referred to in the July 15, 1985 ordinance. However, the map bears the printed date of July 17, 1985.

unconstitutionally deny PAR of its cause of action thereunder. The trial court dismissed PAR's claims and denied its motion for summary judgment. (App. p. 18) PAR's motion to reconsider yielded the same result. (App. p. 15) Thereafter, PAR appealed to the North Carolina Court of Appeals. PAR raised the federal question the issues presented to the Court of Appeals for review; PAR contended that "the trial court committed reversible error in granting the defendant's motion to dismiss because a nine month statute of limitations is not applicable to these circumstances or, if applicable, is an unconstitutional deprivation of a constitutionally protected right." [Issue I].

On August 7, 1990, the North Carolina Court of Appeals issued a decision affirming the trial court in favor of the Village of Pinehurst. (App. p. 5) The Court of Appeals held that:

> PAR characterizes this action as 'a cause of action for deprivation of constitutional rights' and states that the Unites States Supreme Court in *Wilson v. Garcia*, 471 U.S. 261, 85 L. Ed. 2d 254 (1985), has directed that such actions 'be subject to the relevant state's personal injury statute of limitations' which in North Carolina is three years. . . . We do not find *Wilson* controlling.
>
> . . .
>
> . . . North Carolina Courts have not held that violations of federal constitutional claims in zoning actions extend the usual nine-month statute of limitations.
>
> . . .
>
> We hold plaintiff's challenge to the 1985 zoning law based on alleged state and federal constitutional violations is barred by the nine-month statute of limitations.

(*Id.* at App. pp. 11-13.)

PAR exhausted its rights to have the issues further adjudicated in North Carolina's courts upon the denial by the North Carolina Supreme Court of PAR's petition for discretionary review and dismissal of its appeal of right

"for lack of substantial constitutional question." (App. p. 1)

REASONS FOR GRANTING THE PETITION

ISSUE I. Whether North Carolina's nine month statute of limitations bars claims arising under 42 U.S.C. § 1983. The North Carolina Court of Appeals, in its opinion in this matter, held that federal constitutional claims in zoning actions are barred by the nine month statute of limitations established by North Carolina law for zoning actions. (App. pp. 12, 13) The Supreme Court has held, in *Owens v. Okure*, 488 U.S. 235 (1989), "a State's personal injury statute of limitations should be applied to all 42 U.S.C. § 1983 claims." *Id.* at 241. Did the North Carolina Court, by dismissing PAR's claim without reaching the merits, deprive PAR of

constitutionally protected rights?

In order to ensure uniformity in the application of statutes of limitations, the United States Supreme Court has characterized an action for deprivation of constitutional rights as a claim for personal injury, and therefore has directed that actions arising under such a claim be subject to the relevant state's personal injury statute of limitations. *Wilson v. Garcia*, 471 U.S. 261 (1985). The Court's position in this matter has recently been reinforced in the case of *Owens v. Okure*, 488 U.S. 235 (1989), where the Court held that:

> The Court of Appeals therefore correctly applied New York's 3-year statute of limitations governing the general personal injury actions to respondent Okure's claim. Our decision in *Wilson* promised an end to the confusion over what statute of limitations to apply to § 1983 actions; with today's decision, we hope to fulfill *Wilson's* promise. *Id.*, 488 U.S. at 251. (footnote omitted).

North Carolina's personal injury statute of limitations is a three year statute which accrues from the date the damage

was or should have been apparent. N.C.G.S. 1-52(16). (App. p. 22) The wrongful conduct in the instant action, namely the purported passage of a zoning ordinance affecting PAR's property, was taken in July 15, 1985. The wrongful action was discovered one year later, and this litigation was commenced on March 14, 1988, less than three years from the commission or the discovery of the wrongful act.

The North Carolina Court of Appeal, in its opinion, held that "[w]e do not find *Wilson v. Garcia*, 471 U.S. 261, 85 L. Ed. 2d 252 (1985)] controlling." It further held that "North Carolina Courts have not held that violations of federal constitutional claims in zoning actions extend the usual nine-month statute of limitations." This conclusion of the North Carolina Court of Appeals is squarely contradictory to the clear and unambiguous instructions of the Court in *Wilson*:

> We conclude that the statute [42 U.S.C. § 1983] is fairly construed as a directive to select, in each State, the one most appropriate statute of limitations for all § 1983 claims.

Id. at 275 (emphasis added).

Later, in *Owens*, 488 U.S. 235, this Court clarified the matter so as to "end this 'conflict, confusion and uncertainty,'" *Id.* at 240, and held that "a State's personal injury statute of limitations should be applied to all § 1983 claims." *Id.* at 241. (emphasis added).

Nowhere does this Court exempt zoning cases bearing constitutional claims from the rule set forth in *Wilson* and *Owens*. On the contrary, the Court in *Wilson* recognized and included the wide diversity of cases which arise under 42 U.S.C. § 1983: "A catalog of other constitutional claims that have been alleged under § 1983 would encompass numerous and diverse topics and subtopics." *Wilson*, 471 U.S. at 273. The Court continued:

If the choice of the statute of limitations were to depend upon the particular facts or the precise legal theory of each claim, counsel could almost always argue, with considerable force, that two or more periods of limitations should apply to each § 1983 claim." *Id.* While apparently no court has considered such an exemption or exception for zoning, and therefore, this matter raises an issue of first impression, it has been assumed by commentators that the matter was well settled by the unambiguous language of *Wilson* and *Owens*. *See, e.g.*, Rathkopf & Rathkopf, *The Law of Zoning and Planning* § 46.04[8][a].

The immediate issue before the Court, and one which merits the granting of this Petition, is whether North Carolina courts, by judicial fiat, may create an exception to this Court's directive, thereby eroding the uniformity established by *Wilson* and *Owens*.

A. **PAR's pleadings set forth a cause of action under 42 U.S.C. § 1983 and present facts which clearly go well beyond the "run of the mill [zoning] disputes" which fall outside of that statute's protection.**

Unquestionably, not every zoning dispute rises to the level of a constitutional claim. *See, e.g., Creative Environments, Inc. v. Estabrook*, 680 F.2d 822 (1st Cir.), *cert. den.* 459 U.S. 989 (1982) (holding that the claim in question was "too typical of the run of the mill dispute between a developer and a town planning agency.") Here, however, we have almost an unbelievably egregious set of facts giving rise to a complete deprivation of due process for PAR. The only "process" which was afforded to PAR was the changing of letters on a map by persons unknown and on a map not existing. The municipality had no authority to enact the ordinance it claims to have enacted -- the County and General Assembly of North Carolina

did not delegate power to the Village of Pinehurst to zone that territory until seven days after the ordinance was allegedly adopted. PAR was afforded no notice that its property was subject to consideration for new zoning ordinances. PAR was not afforded the opportunity to be heard. After the purported adoption of the ordinance, PAR, even with the greatest of due diligence, could not have discovered the ordinance -- the map referred to in the text of the ordinance, and the only indication that PAR's property had been rezoned was apparently never filed with the town clerk as required by statute.[2]

Notably, the North Carolina Court of Appeals did not reach the issue of whether PAR presented a cause of

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[2]The Court of Appeals erroneously disregarded PAR's contentions in this regard, holding that "[s]ince this question was not raised during the trial and no information regarding this issue is included in the record, it is not properly before this Court." (App. at p. 10) In fact, the matter was indeed before the Court; the argument was presented on four separate occasions in the Record and was raised, as reflected by the Record of the proceeding, at the hearing before the trial judge, the motion to reconsider, and in a response to supplemental materials provided by the Village.

action invoking the protection of 42 U.S.C. § 1983. By holding merely that North Carolina does not recognize the mandate of the Supreme Court in *Wilson* and *Owens*, and applying the nine month statute of limitations, the Court of Appeals was able to dispose of the case. PAR's pleadings do, however, present a substantial claim under 42 U.S.C. § 1983, and thus, had the Court of Appeals examined this case under the statute of limitations imposed by *Wilson* and *Owens*, it could not have concluded otherwise.

Federal courts have articulated three elements which must be fulfilled in order to establish a justiciable constitutional claim under a Fifth and Fourteenth Amendment "taking" theory. *See Jackson Court Condominiums v. City of New Orleans*, 665 F. Supp. 1235 (E.D. La. 1987). The elements are as follows:

1. The plaintiff must have a constitutionally protected property interest;

2. The governmental mechanism by which plaintiff suffered the deprivation is subject to the strictures of procedural due process; and

3. The plaintiff did not receive the process that was due.

Id. at 1243. In this matter, as is more fully established below, the PAR causes of action allege adequate factual circumstances to establish each of these elements, and therefore, PAR's claims should be considered under the Supreme Court mandated three year statute of limitations.

1. PAR has a Constitutionally Protected Property Interest, Namely Protection From a Wrongful Taking of its Property.

The taking of one's property without due process of law is violative of the Fifth and Fourteenth amendments of the United States Constitution and the analogous provisions of Article I, § 19 of the North Carolina

Constitution. Whether a particular zoning ordinance rises to the level of a taking is a question of fact, particular to the circumstances of each case. *See Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922) ("The general rule at least is that property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking. . . . [it] is a question of degree -- and cannot be disposed of by general propositions." *Id.* at 43 S. Ct. 160.) Indeed, the appropriate inquiry, which is generally described by courts and literature as "impact review," requires the court to make "an *ad hoc* factual inquiry into two primary factors: 'the economic impact of the regulation, especially the degree of interference with investment-backed expectations and the character of the governmental action.'" Shonkwiler & Morgan, *Land Use Litigation* § 5.01 at pp. 173-74 (1988), *citing Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426, (1982), *on*

remand, 58 N.Y.2d 143, 479 N.Y.S.2d 743, 446 N.E.2d 428 (1983). In other words, the factual determination is the familiar balancing test: the rights of a property owner to the enjoyment of legitimate uses of his or her property weighed against the governmental interests in public health, safety, morals or public welfare. *See generally*, Yokely, *Zoning Law and Practice*, § 3-11 (Supp. 1988) and numerous cases therein, including *Euclid v. Ambler Co.*, 272 U.S. 365, 387,; *Fred F. French Investment Co. v. City of New York*, 39 N.Y.2d 587, 350 N.E.2d 381 (1976). "Each case must be determined on its facts." *Helms v. City of Charlotte*, 255 N.C. 647, 122 S.E.2d 817, 820 (1961), *citing* McQuillin, *Municipal Corporations*, vol. 8, § 25.43 at pp. 96-97.

It is axiomatic that an action should not be dismissed for a failure to state a claim upon which relief might be granted where a question of fact exists; namely,

in this case, whether a particular governmental act amounted to a taking. In order to balance the private property rights versus public police powers, the finder of fact must determine what benefits and detriments arise from a given zoning ordinance and whether less drastic measures are available. *Goldblatt v. Town of Hempstead*, 369 U.S. 590 (1962); *State v. Joyner*, 386 N.C. 366, 211 S.E.2d 320 (1975). In this instance, a substantial question of fact exists as set forth by the pleadings; PAR alleged in its complaint that its 92 acre "country club" tract was initially zoned and development commenced under the Moore County's "Residential Development" (RD) classification, which permitted development of single and multifamily residential units. Then the Village purportedly changed the zoning without notice or hearing to "Public Conservation and Recreation," a classification which allows no residential development whatsoever, and

permits only golf courses, riding trails, nature preserves, sewer lift stations, and other non-developed uses. Indeed, the circumstances alleged in the pleadings are analogous to those found in the matter of *Fred F. French Investment Co. v. City of New York*, 39 N.Y.2d 587, 350 N.E.2d 381 (1976), where, after a balancing of the facts, the Court there found that a zoning ordinance which purported to create a "Special Park District" which relegated two private parks to restrictions including limiting improvements to "structures incidental to passive recreational use" *Id.*, 350 N.E.2d at 384, was a taking. Likewise, the facts alleged here present an adequate case for further consideration of the constitutional cause of action raised in the pleadings.

2. **The Action Taken by the Village of Pinehurst was Governed by the Strictures of**

Procedural Due Process in that the Purported Zoning in this Instance was not a Legislative Act Because There had been no Delegation of Legislative Power to the Village.

As a second element of determining whether a cause of action rises to the level of a deprivation of constitutional rights for which a remedy exists, PAR's pleadings must establish that the strictures of procedural due process, namely notice and opportunity for a hearing, are indeed required. *Jackson Court Condominiums*, 665 F. Supp. 1235, 1243. Certain governmental actions, namely those which are *legislative*, do not require procedural due process for each person affects:

> Where a rule of conduct applies to more than a few people, it is impracticable that everyone should have a direct voice in its adoption. The Constitution does not require all public acts to be done in town meetings or in an assembly of the hall. General statutes within the state power are passed that affect the person or property of individuals, sometimes to the point of ruin, without
>
> giving them a chance to be heard. Their

> rights are protected the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule.

Bi-Metallic Investment Co. v. State Board of Equalization, 239 U.S. 441, 36 S. Ct. 141 (1915). Zoning ordinances have been declared to be legislative by North Carolina courts, e.g. *Sherrill v. Town of Wrightsville Beach*, 81 N.C. App 369, 344 S.E.2d 357, 360 (1986), and federal courts, *e.g. Q.C. Construction Co. Inc. v. Gallo*, 649 F. Supp. 1331 (D.R.I. 1986). However, what is essential to the determination in each of these cases, and indeed the entire assumption that zoning is a legislative act, are the policy that citizens affected are not completely deprived of an opportunity to be heard even in the legislative act, i.e., citizens may exercise "their power, immediate or remote, over those who make the rule" and the belief that a "complex society" necessarily requires public actions without notice to all those affected. *Bi-Metallic Investment*

Co., supra.

The instant case, however, is readily distinguishable from those above. First, the pleadings state that PAR's properties were the *only* properties of the entire extraterritorial area considered by the Village on July 15th that received a zoning classification different from that which had been previously applied by Moore County. Thus, the legislative nature of this particular purported zoning ordinance, as opposed to the ordinance establishing extraterritorial bounds, is somewhat less than compelling.

More importantly, however, is the fact that the pleadings state that the Village was acting without delegated legislative authority to enact a zoning ordinance concerning PAR's properties. As set forth above in the Statement of Facts, the Village received the right to acquire extraterritorial zoning areas through 1985 Session Law 308, which amended N.C.G.S. § 160A-360(a), the

latter being the delegating statute enabling municipalities such as the Village to exercise zoning powers. The Session Law required the Village to present a resolution to the Moore County Commissioners, whereupon the County Commissioners were to relinquish zoning authority within such areas. The resolution referred to in the Session Law was prepared by the Village on July 15th, 1985. On July 22, 1985, the resolution was presented to the Moore County Commission, and on that same day, the County Commissioners voted to "relinquish the extraterritorial zoning jurisdiction to the [the Village] . . . *effective July 22, 1985.*" [emphasis added]. The purported zoning ordinance allegedly affecting PAR's property was adopted a week earlier, *on July 15, 1985.*

Thus, the purported zoning ordinance in *this* petition is not a legislative act, and therefore not beyond the "strictures of due process." It is not an act affecting a

number of people, but merely the PAR, and therefore not subject to the policy consideration of impracticability of notice. Moreover, inherent in any legislative action is a proper delegation of authority, for without proper delegation, the citizen is deprived of the power, immediate or remote, over those who make the rule. "A zoning ordinance of a municipality is valid and enforceable *if it emanates from ample grant of power by the Legislature to the city or town.*" *Helms v. City of Charlotte*, 255 N.C. 647, 122 S.E.2d 817, 820 (1961). Here, the pleadings establish that the chain of delegation was broken; the Village acted prior to obtaining authority and hence, if PAR is not afforded due process rights, it is afforded no rights at all.

3. **The Action Taken by the Village of Pinehurst Deprived PAR of its Procedural Due Process Rights in that no Notice or Hearing was**

Afforded PAR.

"It is essential to the validity of a municipal zoning ordinance rezoning realty that notice be given and opportunity for hearing be afforded to those whose rights will be affected by the proposed zoning regulation." Rathkopf & Rathkopf, *The Law of Zoning and Planning*, § 10-10 (Supp. 1987); see also *Sellers v. City of Asheville*, 33 N.C. App. 544, 236 S.E.2d 283 (1977). As the United States Supreme Court has stated, "when notice is a person's due, process which is a mere gesture is not due process. [Instead, notice must be] reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Trust Co.*, 339 U.S. 307 (1950).

N.C.G.S. § 160A-364, the notice statute applicable in July 1985, required a public hearing and notice thereof

prior to the adoption of any zoning ordinance. It appears that the time and method of the Village's notice for simply an extension of extraterritorial jurisdiction may have been adequate--but there was no notice whatsoever of the zoning changes heard during that same meeting affecting PAR's properties. As described above, the only notice (which appeared on two occasions), was a notice declaring that a "hearing for the purpose of considering a proposed area of extraterritorial zoning" was to be held on July 8, 1985.

It is generally held that where a specific proposal is set forth in the notice of hearing, any substantial change therein at, or as a result of, the public hearing requires a new notice to be published and a new hearing, in the absence of which, the legislation will be declared void. Rathkopf & Rathkopf, *supra* at § 10-17. Furthermore, where there are ambiguities in the notice of a proposed

zoning change, such ambiguities should be resolved against the sufficiency of the notice. *Id.* at Supp. p. 79, *City & County of Denver v. Eggert*, 746 P.2d 216 (1982); *Holly Development, Inc. v. Bd. of County Commissioners*, 342 P.2d 216 (1950). This is not to say that the notice must be highly specific as to the purposes of the hearing, but must be clear and unambiguous and readily intelligible to the intended reader, the average citizen at large, who is presumed to lack the technical knowledge of a zoning expert. *North Beach Medical Center, Inc. v. City of Ft. Lauderdale*, 374 So. 2d 1106 (Fla. App. 1979); *Circle M. Construction, Inc. v. Apache Junction*, 701 P.2d 850 (Ariz. App. 1985).

It is clear that the authors of the North Carolina General Statutes consider that the process of acquiring extraterritorial zoning jurisdictions is a separate and distinct function from the process of zoning such newly

acquired jurisdictions. North Carolina G.S. § 160A-360(b) requires that a municipality adopt an ordinance specifying the areas to be included, and further, N.C.G.S. § 160A-364 specifies that a public hearing must be held prior to the adoption of such an ordinance. Thereafter, N.C.G.S. § 160A-360(f) states that "the county [in this case, Moore County] regulations and powers of enforcement *shall remain in effect*" for a period of sixty days or until the municipality [in this case, the Village] adopts its own ordinances, and that during this sixty day period, hearings may be held. Indeed, the Village was instructed by a representative of the North Carolina Natural Resources and Community Development planning department that:

> . . . [just] because the General Assembly grants two mile jurisdiction does not necessarily mean that all three towns would automatically take in the two miles. *First* the municipalities would have to establish an ordinance to extend their jurisdiction and to define the boundary either in an ordinance or on a map. Then the municipality must hold a public hearing before they can take in

> extraterritorial area. Once extraterritorial jurisdiction is taken in, *then they extend zoning and have an additional public hearing.*

The distinction between the acquisition of extraterritorial territories and the zoning thereof, and the requirements of notice specific to each, has recently been recognized by the North Carolina Court of Appeals in the *Raynor v. Raynor and the Town of Garner* case, 379 S.E.2d 880 (N.C. App. 1989), where the Court outlined the statutory provisions for acquiring and zoning such jurisdictions. As the Court there said, "*[o]nce a city or town has placed within its jurisdiction extraterritorial areas*, methods of procedure for zoning are as follows . . . [including notice of proposed zoning to affected landowners]." *Id.* at 882 [emphasis added].

The notice provided by the Village apprised readers of it that the Village was engaged only one of the two steps required to acquire and then zone

extraterritorial jurisdictions. The notice simply said that the Village was "considering a proposed area for addition to the extraterritorial jurisdiction of the Village of Pinehurst." This notice, under any reading, simply does not apprise the reader whose rights might be affected of the nature and character of the action proposed." *Sellers v. City of Asheville*, 33 N.C. App. 544, 549, 236 S.E.2d 283, 286 (1977); *Bryan v. Raynor and the Town of Garner*, 379 S.E.2d 880, 883 (N.C. App. 1989).

Where, as in this case, notice is deficient, and thereby an opportunity for a hearing is denied as well, procedural due process is not afforded. PAR has been denied its constitutionally guaranteed protection under 42 U.S.C. § 1983.

Thus, while perhaps certain zoning disputes are not appropriately remedied under a cause of action for constitutional deprivation, the instant case certainly is.

PAR's pleadings state a cause of action parallel to the requirements of the United States Supreme Court for such actions: PAR pleads a deprivation of a fundamental and protected constitutional right, PAR pleads a process inherently or by default subject to the strictures of due process, and PAR pleads a manifest denial of due process. Under these pleadings, a dismissal for failure to state a cause of action based upon a nine month statute of limitations simply contradicts the clear and unequivocal mandate of the Supreme Court; claims asserting deprivation of constitutional rights are governed by three year statutes of limitations in North Carolina.

ISSUE II. **Whether the petitioner, by being barred from relief by a nine month statute of limitations, was deprived of a constitutionally protected property right to its cause of action where the petitioner received no notice**

of the offending ordinance and whether, under the circumstances of this case, the North Carolina statute of limitations applicable to zoning matters is unconstitutional.

The nine month statute of limitations, as applied to this petitioner, is unconstitutional because it deprives the petitioner of its cause of action, which is a "species of property protected by the Fourteenth Amendment's Due Process Clause. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982). In order for a citizen to pursue a cause of action, he must first be aware that his interests have been adversely affected. To the extent that the North Carolina statute of limitations bars claims after nine months, irrespective of whether notice was given or received or reasonably discoverable by the affected party, it cannot be allowed to stand. This, therefore, presents

this Court with an additional ground for granting PAR's petition, and, like the issue raised above, presents the Court with an issue of first impression.

This Court, in *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478 (1987), considered an Oklahoma probate law requiring claims to be presented to the executor of an estate within two months of publication of notice advising creditors of the commencement of probate proceedings. The question presented in that case was whether the provision of notice solely by publication satisfied the Due Process Clause.

The Court in *Pope* summarily reached the conclusion that notice was indeed required in any state action affecting property. "An elementary and fundamental requirement of due process in any proceeding which is to be according finality is notice reasonably calculated, under all the circumstances, to appraise

interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 307, 314 (1950). The Court further concluded, citing *Logan*, *supra*, that a cause of action is indeed a protected property interest which cannot be denied a claimant without due process of law. *Pope*, *supra* at 478.

In the probate process, the notice triggers the time bar. Similarly, in the case at hand, the notice required prior to consideration of a zoning ordinance triggers the beginning of the process which will ultimately result in a brief, nine month period in which, under North Carolina's statute of limitations, an aggrieved party can contest the validity of a zoning ordinance. The probate notice is, according to *Pope*, a state action, and likewise, the notice required of the municipality prior to the enactment of a zoning ordinance is a state action. Under *Pope*, in the

probate process, where notice is not provided in a fashion reasonable under the circumstances, the statute of limitations cannot be invoked to bar the claim of one who was not notified. Similarly, in the case at hand, where notice is defective or otherwise unreasonable under the circumstances, a statute of limitations which bars claims irrespective of whether notice was properly given is contrary to the Constitutional requirements for Due Process.

It is indisputable that the State has a legitimate policy interest in achieving prompt finality in zoning matters. As the Court of Appeals pointed out in its opinion, "there is a strong need for finality with respect to zoning matters so that landowners may use their property without fear of a challenge years after zoning has been

apparently determined."[3] But, as the Court pointed out in *Pope*, so also the State has a legitimate interest in the swift disposition of probate proceedings. However, the provision of actual notice is not inconsistent with the goals and legitimate interests of the State in either the probate context, *Pope*, *id.* at 489, and in the zoning context. The Court has "repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice." *Id.* at 490.[4]

[3]While this policy is, of course, essential in the context of zoning in general, it is inapplicable as a policy argument in the case at hand. Here, the utter failure of the Village of Pinehurst to observe procedural safeguards with regards to the zoning of PAR's property, including the failure to notify affected property owners, the lack of jurisdiction of the property which was purportedly zoned, and the failure to create a record of the ordinance, is more destructive to the Court of Appeal's stated policy because, under these circumstances, no one can be sure what zoning applies to any property in the Village. The public policy for an orderly and systematic zoning process whereby affected citizens are made aware of the zoning which pertains to their property is more compelling than the Village's interest, in this instance, in attaining quick finality.

[4]Since the purported enactment of the zoning ordinances at issue, the State of North Carolina has enacted a new notice statute which requires actual notice by mail to affected property owners.

Thus, by analogy, the line of thought which led the Court in *Pope* to conclude that, in the context of state actions, a due process cause of action exists where a statute of limitations, triggered by notice, deprives one of a property right if the notice is defective or unreasonable, is equally applicable here. As in *Pope*, the instant case lends itself to the same analysis; the Village cannot hide behind a nine month statute of limitations where, because of its own faulty notice, deprived PAR the right to be heard regarding zoning affecting its property. If the North Carolina statute of limitations is to be so strictly construed as to bar even these egregious facts, then the statute is itself unconstitutional.

CONCLUSIONS

As this Court in *Wilson* held, the rights enforceable under § 1983 include those guaranteed by the Federal

Government in the Fourteenth Amendment: that every person within the United States is entitled . . . to those 'fundamental principles of liberty and justice' that are contained in the Bill of Rights and 'lie at the base of all of our civil and political institutions.' These guarantees of liberty are among the rights possessed by every individual in a civilized society, and not privileges extended to the people by the legislature." 471 U.S. 278. Here, the Village, by its utter inability to abide by procedural safeguards inherent in statutes governing the enactment of zoning regulations, has deprived PAR of its constitutionally protected property interest. Under such circumstances, PAR's rights must be protected by 42 U.S.C. § 1983 and the remedies set forth therein, and indeed, PAR has asserted those rights and remedies at every stage of this litigation. For the North Carolina Court to rule that it, as a policy matter, will disregard the

United Supreme Court in zoning matters is clear error which perpetuates the constitutional deprivations suffered by PAR. Alternatively, a statute of limitations which permits constitutional claims to lapse because of the Village's failure to property notify protected property owners is itself inherently at fault; to the extent that it deprives claimants who recieved no notice, it unconstitutionally deprives such claimants, such as PAR, of their protected cause of action property interest.

For the foregoing reasons, Petitioner urges this Court to issue a writ of certiorari.

Respectfully submitted, this the 10th day of April, 1991.

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(919) 755-0505
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Paul C. Ridgeway

APPENDICES

APPENDIX A

SUPREME COURT OF NORTH CAROLINA

TWENTY-A DISTRICT

PINEHURST AREA REALTY, INC.

v.

THE VILLAGE OF PINEHURST

From Moore County
8920SC1101

Opinion No. 461P90

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by the Plaintiff in this matter pursuant to G.S. 7A-30, and the motion to dismiss the appeal for lack of substantial constitutional question filed by the Defendant; and upon consideration of the petition for discretionary review of the decision of

the North Carolina Court of Appeals, filed by Plaintiff pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals: the motion to dismiss the appeal is

> "Allowed by order of the Court in conference, this the 10th day of January 1991.
>
> s/ Whichard, J.
> For the Court"

The Petition for Discretionary Review is:

> "Denied by order of the Court in conference, this the 10th day of January 1991.
>
> s/ Whichard, J.
> For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 16th day of January 1991.

J. GREGORY WALLACE
Clerk of the Supreme Court
/s/ _____
PEGGY N. BYRD
Assistant Clerk

APPENDIX B

NORTH CAROLINA COURT OF APPEALS

NO. 8920SC1101

PINEHURST AREA REALTY, INC.

v.

THE VILLAGE OF PINEHURST

From Moore County
Number: 88CVS198

Filed January 18, 1991

DENIED

Appeal to review the decision of the Court of Appeals filed on August 7, 1990 was dismissed and Petition for Discretionary Review was denied by order of the Supreme Court of North Carolina in Conference on the 10 day of January, 1991 and same has been certified

to the North Carolina Court of Appeals.

IT IS THEREFORE CERTIFIED to the Clerk of Superior Court Moore County North Carolina that the Supreme Court has dismissed the Appeal and denied the Petition for Discretionary Review in this cause.

Witness my hand and official seal this the 10 day of January, 1991.

/s/ _____
FRANCIS E. DAIL
Clerk of the Court of Appeals

/s/ _____
JEANNE STAKEMAN
Deputy Clerk

APPENDIX C

NORTH CAROLINA COURT OF APPEALS

NO. 8920SC1101

PINEHURST AREA REALTY, INC.,
Plaintiff,

v.

THE VILLAGE OF PINEHURST,
Defendant.

Filed August 7, 1990

AFFIRMED

Appeal by plaintiff from order entered 21 July 1989 by Judge William H. Freeman in Moore County Superior Court. Heard in the Court of Appeals 11 April 1990.

Plaintiff is the real estate developer of a "residential community" which includes a golf course (hereinafter, "the country club property"). In addition,

plaintiff owns a smaller tract adjoining the country club property upon which plaintiff maintains its place of business (hereinafter, "the office property"). Prior to July 1985, both properties were within the planning and zoning jurisdiction of Moore County. The country club property was zoned for "Residential Development" (RD) which permitted uses such as single and multi-family residences. The office property was zoned for "Business-1" (B-1) which permitted a wide variety of commercial uses.

On 3 June 1985, the North Carolina General Assembly ratified 1985 Session Law 308 which amended General Statute § 160A-360(a) and allowed defendant Village of Pinehurst the right to exercise its zoning and planning powers up to two miles beyond its corporate limits. Defendant published notices in the local newspaper of a public hearing "for the purpose of considering a proposed area for addition to the

extraterritorial zoning jurisdiction of the Village of Pinehurst." Plaintiff was already aware of the area to be included in the extraterritorial jurisdiction of the Village, and knew that its property was to be included and so did not attend the public hearing. On 15 July 1985, the Village Council of defendant adopted an ordinance stating, in part:

> That the area of extra-territorial limits of the Village of Pinehurst shall be amended and extended as shown and delineated on the map prepared by C.H. Blue and Associates, which map is attached hereto, and correspondingly described in exhibit "A" attached hereto and dated July 15, 1985.

Plaintiff alleges that no "Exhibit A" dated July 15, 1985 has ever been found, produced or proven. On 22 July 1985, the Board of Commissioners of Moore County relinquished extraterritorial zoning jurisdiction to defendant. When defendant extended its extraterritorial jurisdiction, it designated plaintiff's country club property

"Public Conservation and Recreation" (PCR) and the office property "Office Professional" (OP). Plaintiff states that it did not learn of the rezoning until June 1986 when two of its representatives "happened to glance at a zoning map fastened to a wall in the office of the manager of the Village."

In January 1987, plaintiff requested that its office tract be rezoned from OP to "Neighborhood Commercial" (NC). Defendant amended its zoning ordinance to subdivide the former NC classification into two new classifications, NC-1 and NC-2 and then rezoned the office property NC-2. The NC-2 designation was less restrictive than OP.

Plaintiff filed a complaint challenging both the 1985 and the 1987 rezonings on state and federal due process grounds. Defendant moved to dismiss the complaint for failure to state a claim for which relief could be granted.

Plaintiff filed a motion for summary judgment. The court granted defendant's motion and denied plaintiff's motion. Plaintiff appeals.

Allen & Pinnix, by Noel L. Allen and Paul C. Ridgeway, for plaintiff-appellant.

Petree Stockton & Robinson, by Penni P. Bradshaw and Robin E. Shea, for defendant-appellee.

LEWIS, Judge.

Plaintiff challenges two zoning actions by defendant, the 1985 zoning of plaintiff's property, and a 1987 rezoning.

I: The 1985 Zoning.

Plaintiff states that a threshold question is the determination of whether a zoning ordinance was indeed enacted. The allegation is based on the purported failure by defendant to file and index properly the map which demonstrated the zoning boundaries in accordance with

the G. S. § 160A-77. Since this question was not raised during the trial and no information regarding this issue is included in the record, it is not properly before this Court.

Plaintiff also asserts that its claim is sufficient to raise a constitutional cause of action so as to invoke a three year statute of limitations instead of the nine-month statute of limitations as provided by G.S. § 160A-364.1 for challenging zoning ordinances. G.S. 160A-364.1 provides:

> A cause of action as to the validity of any zoning ordinance . . . adopted under this Article or other applicable law shall accrue upon adoption of the ordinance . . . and shall be brought within nine months as provided in G.S. 1-54.1.

Plaintiff challenges the validity of the zoning on state constitutional grounds, arguing that the defendant failed to properly notify it of the impending zoning action affecting its property in violation of N.C.G.S. § 160A-364. In fact, defendant's published notice of the zoning action stated that the Village would consider extending its

extraterritorial zoning jurisdiction, and the metes and bounds description included the land owned by appellant. That description put plaintiff on notice that changes would be made affecting its property. See Stutts v. Swaim, 30 N.C. App. 611, 228 S.E.2d 750, disc. rev. denied, 291 N.C. 178, 229 S.E.2d 692 (1976). Moreover, North Carolina case law indicates that the statute quoted above has been strictly construed. Petitioner in In re Appeal of CAMA Permit also alleged that the respondent town had failed to follow proper procedural rules. This Court concluded, however, that "even if the record disclosed that the Town of Bath had violated procedural rules . . ., petitioner is barred from attacking the validity of the amendment based on procedural grounds by the statute of limitations provided in G.S. 160A-364.1. . . ." 82 N.C. App. 32, 41-42, 345 S.E.2d 699, 705 (1986).

Plaintiff characterizes this action as "a cause of

action for deprivation of constitutional rights" and states that the United States Supreme Court in Wilson v. Garcia, 471 U.S. 261, 85 L.Ed. 2d 252 (1985), has directed that such actions "be subject to the relevant state's personal injury statute of limitations" which in North Carolina is three years. The Wilson court was addressing federal civil rights actions under 42 U.S.C.S. § 1983 when it chose to apply the personal injury statute of limitations. We do not find Wilson controlling.

Zoning claims raise important public policy considerations. There is a strong need for finality with respect to zoning matters so that landowners may use their property without fear of a challenge years after zoning has apparently been determined. North Carolina courts have not held that violations of federal constitutional claims in zoning actions extend the usual nine-month statute of limitations. In Sherrill v. Town of Wrightsville Beach, 81

N.C. App. 369, 344 S.E.2d 357, dis. rev. denied, 318 N.C. 417, 349 S.E.2d 600 (1986), this Court held that plaintiff's claims for federal due process violations were barred by the nine-month statute of limitations. It is noteworthy that Sherrill was decided after Wilson, supra.

We hold plaintiff's challenge to the 1985 zoning law based on alleged state and federal constitutional violations is barred by the nine-month statute of limitations. The trial court properly dismissed plaintiff's complaint for failure to state a claim for which relief could be granted.

II: The 1987 Rezoning

Plaintiff contends that its rights were violated by defendant when plaintiff was given a more restrictive zoning than what it requested for its office tract. The rezoning was, however, less restrictive than the original zoning. The rezoning not only allowed the current use to continue but it also permitted even broader uses of

plaintiff's property. Plaintiff made a vague allegation that it "has been damaged in an [sic] yet unascertained amount due to lost opportunities for sale, use and development of the properties." This is speculative and cannot stand. Plaintiff has done nothing to acquire a vested right to a less restrictive zoning and cannot recover speculative damages in an "unascertained amount" due to lost potential opportunities for development of the property. Defendant rezoned the property to allow for the then-current uses and plaintiff has suffered no measurable damages. Plaintiff's allegations are insufficient as a matter of law to state any claim as to the 1987 rezoning and thus were properly dismissed pursuant to Rule 12(b)(6).

AFFIRMED.

Judges ARNOLD and DUNCAN concur.

APPENDIX D

STATE OF NORTH CAROLINA)
)
COUNTY OF MOORE)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

88 CVS 198

PINEHURST AREA REALTY, INC.,
Plaintiff,

v.

THE VILLAGE OF PINEHURST,
Defendant.

ORDER FOR DISMISSAL OF PLAINTIFF'S CLAIMS ALLOWED AND PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO RECONSIDER DENIED

THIS CAUSE COMING ON TO BE HEARD and being heard before the undersigned Judge Presiding at the February 6, 1989, term of Civil Superior Court, Moore

County, North Carolina, on Defendant Village of Pinehurst's Motion to Dismiss and Plaintiff Pinehurst Area Realty's Motion for Summary Judgment, and thereafter on Plaintiff's Motion to Reconsider;

AND IT APPEARING to the Court, having considered the matters of record, including Plaintiff's Motion to Reconsider, Plaintiff's Response to Supplemental Submissions of Defendant, and Defendant's Response to Plaintiff's Motion to Reconsider, and the briefs, correspondence and oral arguments of counsel for Plaintiff and Defendant, that Plaintiff has failed to state claims for which relief can be granted such that Plaintiff's claims should be dismissed pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure;

AND IT FURTHER APPEARING to the Court that Plaintiff's Motion for Summary Judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure

should be denied;

AND IT FURTHER APPEARING to the Court that Plaintiff's Motion to Reconsider should be denied;

AND IT FURTHER APPEARING to the Court that the parties have consented to this Order being signed after session and out of district;

NOW, THEREFORE, it is ORDERED, ADJUDGED, and DECREED, that Defendant's Motion to Dismiss be and the same is hereby allowed, and Plaintiff's claims hereby dismissed, and further that Plaintiff's Motion for Summary Judgment and Motion to Reconsider are hereby denied.

This the 19th day of July, 1989.

/s/_____
WILLIAM H. FREEMAN
Judge Presiding

APPENDIX E

NORTH CAROLINA)
)
MOORE COUNTY)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

88 CVS 198

PINEHURST AREA REALTY, INC.,
Plaintiff,

v.

THE VILLAGE OF PINEHURST,
Defendant.

ORDER FOR DISMISSAL OF PLAINTIFF'S CLAIMS ALLOWED AND PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT DENIED

THIS CAUSE COMING ON TO BE HEARD and being heard before the undersigned Judge Presiding at the February 6, 1989 term of Civil Superior Court, Moore County, North Carolina, on Defendant Village of

Pinehurst's Motion to Dismiss and Plaintiff Pinehurst Area Realty's Motion for Summary Judgment;

AND IT APPEARING to the Court, having considered the matters of record and the briefs and oral arguments of counsel for Plaintiff and Defendant, that Plaintiff has failed to state claims for which relief can be granted such that Plaintiff's claims should be dismissed pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure;

AND IT FURTHER APPEARING to the Court that Plaintiff's Motion for Summary Judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure should be denied;

NOW, THEREFORE, it is ORDERED, ADJUDGED, and DECREED that Defendant's Motion to Dismiss be and the same is hereby allowed, and Plaintiff's claims hereby dismissed, and further that

Plaintiff's Motion for Summary Judgment is hereby denied.

This the 23rd day of February, 1989.

/s/ _____
WILLIAM H. FREEMAN
Judge Presiding

APPENDIX F

§ 1-54.1. Nine months.

Within nine months an action contesting the validity of any zoning ordinance or amendment thereto adopted by a county under Part 3 of Article 18 of Chapter 153A of the General Statutes or other applicable law or adopted by a city under Article 160A of the General Statutes or other applicable law.

APPENDIX G

ARTICLE 5.

Limitations, Other than Real Property.

§ 1-52. Three years.

(16) Unless otherwise provided by statute, for personal injury or physical damage to claimant's property, the cause of action, except in causes of actions referred to in G.S. 1-15(c), shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. Provided that no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action.

APPENDIX H

CHAPTER 308

S.B. 343

AN ACT RELATING TO THE EXERCISE OF EXTRATERRITORIAL PLANNING POWERS BY THE TOWN OF ABERDEEN, THE VILLAGE OF PINEHURST AND THE TOWN OF SOUTHERN PINES IN MOORE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160-A-306(a) is amended by adding a new sentence at the end to read:

"The Town of Aberdeen, the village of Pinehurst and the Town of Southern Pines may exercise the powers granted by this Article for a distance of not more than two miles beyond their corporate limits, without regard to the population limitations of this subsection."

Sec. 2. G.S. 160A-360(f) is amended by adding a new sentence at the end of the first paragraph to read:

"When either the Town of Aberdeen, the Village of

Pinehurst, or the Town of Southern Pines annexes any area outside its corporate limits thus extending the area over which it would be allowed under subsection (a) of this section to exercise the powers granted by this Article, upon presenting proper evidence to the County Board of Commissioners that such annexation has been accomplished, the County Board of Commissioners shall adopt a resolution authorizing said municipality to exercise these powers within the extended area thus described."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 3rd day of June, 1985.

APPENDIX I

The

JULY 22, 1985

MEETING OF THE MOORE COUNTY

BOARD OF COMMISSIONERS

The Moore County Board of Commissioners met in regular session on July 22, 1985 at 6:30 p.m. in the Commissioners Room located on the second floor of the old Courthouse building in Carthage, North Carolina....

H. VILLAGE OF PINEHURST
I. TOWN OF SOUTHERN PINES

The Village of Pinehurst presented a resolution establishing a common boundary between the extraterritorial zoning jurisdiction of the Town of Southern Pines and the Village of Pinehurst and an ordinance providing for the extraterritorial limits of the Village of Pinehurst for purposes of planning and zoning, building inspections and subdivision regulations, both passed by the

Village Council. Also maps were provided by the Village and the Town of Southern Pines determining common boundary lines as previously requested by the Board.

Upon motion made by Commissioner Riley and seconded by Chairman Purvis, the Board voted unanimously to support the resolution to relinquish the extraterritorial zoning jurisdiction to the Village of Pinehurst and the Town of Southern Pines effective July 22, 1985.